

1 Linda B. Oliver (SBN 166720)
2 Email: loliver@reedsmith.com
3 Eugenia S. Chern (SBN 215092)
4 Email: echern@reedsmith.com
REED SMITH LLP
1999 Harrison Street, Suite 2400
Oakland, CA 94612-3572

5 **Mailing Address:**
P.O. Box 2084
6 Oakland, CA 94604-2084

7 Telephone: 510 763 2000
Facsimile: 510 273 8832

9 Attorneys for Defendant Protective Life
10 Insurance Company, successor-in-interest to
Chase Insurance Life and Annuity Company,
formerly known as Federal Kemper Life
Assurance Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARY L. TUTTLE,

Plaintiff,

Case No. C 07-03637 SI

STIPULATED PROTECTIVE ORDER

CHASE INSURANCE LIFE AND ANNUITY
COMPANY, FEDERAL KEMPER LIFE
ASSURANCE CO., SELECTQUOTE
INSURANCE SERVICES, and DOES 1-10.

Defendants.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted.

Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated

1 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords extends only to the limited
3 information or items that are entitled under the applicable legal principles to treatment as
4 confidential. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated
5 Protective Order creates no entitlement to file confidential information under seal; Civil Local Rule
6 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied
7 when a party seeks permission from the court to file material under seal.

8

9 2. DEFINITIONS

10 2.1 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and outside counsel (and their support staff).

12 2.2 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner generated, stored, or maintained (including, among other things, testimony,
14 transcripts, or tangible things) that are produced or generated in disclosures or responses to
15 discovery in this matter.

16 2.3 “Confidential” Information or Items: information (regardless of how
17 generated, stored or maintained) or tangible things that qualify for protection under standards
18 developed under F.R.Civ.P. 26(c).

19 2.4 “Highly Confidential – Attorneys’ Eyes Only” Information or Items:
20 extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
21 party would create a substantial risk of serious injury that could not be avoided by less restrictive
22 means.

23 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from
24 a Producing Party.

25 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
26 Material in this action.

1 2.7 Designating Party: a Party or non-party that designates information or items
2 that it produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential
3 — Attorneys' Eyes Only."

4 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
5 "Confidential" or as "Highly Confidential — Attorneys' Eyes Only."

6 2.9 Outside Counsel: attorneys who are not employees of a Party but who are
7 retained to represent or advise a Party in this action.

8 2.10 House Counsel: attorneys who are employees of a Party.

9 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
10 their support staffs).

11 2.12 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
13 witness or as a consultant in this action and who is not a past or a current employee of a Party or of a
14 competitor of a Party's and who, at the time of retention, is not anticipated to become an employee
15 of a Party or a competitor of a Party's. This definition includes a professional jury or trial
16 consultant retained in connection with this litigation.

17 2.13 Professional Vendors: persons or entities that provide litigation support
18 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;
19 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
20 subcontractors.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected Material (as
23 defined above), but also any information copied or extracted therefrom, as well as all copies,
24 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
25 parties or counsel to or in court or in other settings that might reveal Protected Material.

1 4. DURATION

2 Even after the termination of this litigation, the confidentiality obligations imposed by this
3 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
4 otherwise directs.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
7 Party or non-party that designates information or items for protection under this Order must take
8 care to limit any such designation to specific material that qualifies under the appropriate standards.
9 A Designating Party must take care to designate for protection only those parts of material,
10 documents, items, or oral or written communications that qualify – so that other portions of the
11 material, documents, items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
14 to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily
15 encumber or retard the case development process, or to impose unnecessary expenses and burdens
16 on other parties), expose the Designating Party to sanctions.

17 If it comes to a Party's or a non-party's attention that information or items that it designated
18 for protection do not qualify for protection at all, or do not qualify for the level of protection initially
19 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
20 mistaken designation.

21 5.2 Manner and Timing of Designations. Except as otherwise provided in this
22 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
23 material that qualifies for protection under this Order must be clearly so designated before the
24 material is disclosed or produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (apart from transcripts of
27 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
28 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of

1 each page that contains protected material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
3 by making appropriate markings in the margins) and must specify, for each portion, the level of
4 protection being asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
5 ATTORNEYS' EYES ONLY").

6 A Party or non-party that makes original documents or materials available for
7 inspection need not designate them for protection until after the inspecting Party has indicated which
8 material it would like copied and produced. During the inspection and before the designation, all of
9 the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –
10 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
11 copied and produced, the Producing Party must determine which documents, or portions thereof,
12 qualify for protection under this Order, then, before producing the specified documents, the
13 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
14 CONFIDENTIAL – ATTORNEYS' EYES ONLY") at the top of each page that contains Protected
15 Material. If only a portion or portions of the material on a page qualifies for protection, the
16 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
17 markings in the margins) and must specify, for each portion, the level of protection being asserted
18 (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY").

19 (b) for testimony given in deposition or in other pretrial or trial
20 proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record,
21 before the close of the deposition, hearing, or other proceeding, all protected testimony, and further
22 specify any portions of the testimony that qualify as "HIGHLY CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY." When it is impractical to identify separately each portion of testimony that is entitled
24 to protection, and when it appears that substantial portions of the testimony may qualify for
25 protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the
26 record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the
27 specific portions of the testimony as to which protection is sought and to specify the level of
28 protection being asserted ("CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'

1 EYES ONLY"). Only those portions of the testimony that are appropriately designated for
2 protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

3 Transcript pages containing Protected Material must be separately bound by
4 the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or
5 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," as instructed by the Party or non-
6 party offering or sponsoring the witness or presenting the testimony.

7 (c) for information produced in some form other than documentary, and
8 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
9 container or containers in which the information or item is stored the legend "CONFIDENTIAL" or
10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only portions of the information
11 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
12 portions, specifying whether they qualify as "Confidential" or as "Highly Confidential – Attorneys'
13 Eyes Only."

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
15 to designate qualified information or items as "Confidential" or "Highly Confidential – Attorneys'
16 Eyes Only" does not, standing alone, waive the Designating Party's right to secure protection under
17 this Order for such material. If material is appropriately designated as "Confidential" or "Highly
18 Confidential – Attorneys' Eyes Only" after the material was initially produced, the Receiving Party,
19 on timely notification of the designation, must make reasonable efforts to assure that the material is
20 treated in accordance with the provisions of this Order.

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
23 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
24 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
25 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
26 after the original designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
28 Party's confidentiality designation must do so in good faith and must begin the process by

1 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
2 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
3 for its belief that the confidentiality designation was not proper and must give the Designating Party
4 an opportunity to review the designated material, to reconsider the circumstances, and, if no change
5 in designation is offered, to explain the basis for the chosen designation. A challenging Party may
6 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
7 process first.

8 6.3 Judicial Intervention. A Party that elects to press a challenge to a
9 confidentiality designation after considering the justification offered by the Designating Party may
10 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if
11 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
12 Each such motion must be accompanied by a competent declaration that affirms that the movant has
13 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
14 forth with specificity the justification for the confidentiality designation that was given by the
15 Designating Party in the meet and confer dialogue.

16 The burden of persuasion in any such challenge proceeding shall be on the
17 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
18 material in question the level of protection to which it is entitled under the Producing Party's
19 designation.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
22 disclosed or produced by another Party or by a non-party in connection with this case only for
23 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
24 disclosed only to the categories of persons and under the conditions described in this Order. When
25 the litigation has been terminated, a Receiving Party must comply with the provisions of section 11,
26 below (FINAL DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a location
28 and in a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated CONFIDENTIAL only to:

4 (a) the Receiving Party's Outside Counsel of record in this action, as well
5 as employees of said Counsel to whom it is reasonably necessary to disclose the information for this
6 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
7 hereto as Exhibit A;

8 (b) the officers, directors, and employees (including House Counsel) of
9 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
10 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

11 (c) experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
13 Bound by Protective Order" (Exhibit A);

14 (d) the Court and its personnel;

15 (e) court reporters, their staffs, and professional vendors to whom
16 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
17 Bound by Protective Order" (Exhibit A);

18 (f) during their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
20 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 Protected Material must be separately bound by the court reporter and may not be disclosed to
22 anyone except as permitted under this Stipulated Protective Order.

23 (g) the author of the document or the original source of the information.

24 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
25 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
27 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) House Counsel of a Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, and (2) who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(f) the author of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION.

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in no event more than three court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

1 The purpose of imposing these duties is to alert the interested parties to the existence of this
2 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
3 confidentiality interests in the court from which the subpoena or order issued. The Designating
4 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
5 material – and nothing in these provisions should be construed as authorizing or encouraging a
6 Receiving Party in this action to disobey a lawful directive from another court.

7 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
10 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
11 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the
12 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and
13 (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
14 that is attached hereto as Exhibit A.

15 10. FILING PROTECTED MATERIAL. Without written permission from the
16 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
17 may not file in the public record in this action any Protected Material. A Party that seeks to file
18 under seal any Protected Material must comply with Civil Local Rule 79-5.

1 11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the
2 Producing Party, within sixty days after the final termination of this action, each Receiving Party
3 must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected
4 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing or
5 capturing any of the Protected Material. With permission in writing from the Designating Party, the
6 Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether
7 the Protected Material is returned or destroyed, the Receiving Party must submit a written
8 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
9 by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material
10 that was returned or destroyed and that affirms that the Receiving Party has not retained any copies,
11 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
12 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
13 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
14 even if such materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Protective Order as set forth in Section 4
16 (DURATION), above.

17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
19 person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of this
21 Protective Order no Party waives any right it otherwise would have to object to disclosing or
22 producing any information or item on any ground not addressed in this Stipulated Protective Order.
23 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
24 material covered by this Protective Order.

1
2 DATED: August 16, 2007.
3

4 REED SMITH LLP
5
6

7 By //ss// Linda B. Oliver
8

9 Linda B. Oliver
10 Eugenia S. Chern
11 Attorneys for Defendant Protective Life Insurance
12 Company, successor-in-interest to Chase Insurance
13 Life and Annuity Company, formerly known as
14 Federal Kemper Life Assurance Company
15

16 DATED: July 31, 2007.
17

18 By //ss// James F. Kemp
19

20 James F. Kemp
21 Martin Andreas
22 Attorneys for Plaintiff Mary L. Tuttle
23

24 DATED: August 8, 2007.
25

26 WILSON, ELSER MOSKOWITZ EDELMAN &
27 DICKER LLP
28

29 By //ss// Sara J. Savage
30

31 Sara J. Savage
32 Attorneys for Defendant SelectQuote Insurance
33 Services
34

35 IT IS SO ORDERED.
36

37 DATED: _____
38

39 By *Susan Illston*
40 UNITED STATES DISTRICT COURT JUDGE
41